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Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Secretary-General*

I. Introduction

1. The General Assembly, in paragraph 5 of its resolution 61/262, recalled its resolution 37/240, and requested the Secretary-General to review and update the travel and subsistence regulations for the International Court of Justice, taking into account the recommendation of the Advisory Committee on Administrative and Budgetary Questions in paragraph 15 of its report (A/61/612 and Corr.1) and bearing in mind the relevant provisions of the Statute of the International Court of Justice, and to report thereon to the General Assembly, for its approval, at its sixty-second session. In paragraph 11 of the same resolution, the Assembly requested the Secretary-General to submit a report to it at its sixty-second session on options for designing pension schemes for the members of the Court, and for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office. As the study on options for designing pension schemes that has been commissioned from a consulting firm is not yet ready for submission, it will be submitted as an addendum to the present report. It is also recalled that, before the adoption of resolution 61/262, the President of the Assembly informed delegations that she had received a letter dated 3 April 2007 from the President of the Court (A/61/837) expressing the Court's deep concern that the proposed action regarding emoluments of the judges would create inequality

* The submission of the report was delayed owing to the need to conduct several rounds of extensive consultations with the responsible officials.

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among judges and requesting the Assembly to consider postponing action on the draft resolution to a later date. A number of delegations expressed their concerns about the issues raised in the letter of the President of the Court and requested that they be addressed in the context of the Secretary-General's report submitted at the sixty-second session. Accordingly, those issues are also addressed in the present report. Further, annex I contains a memorandum dated 6 June 2007 from the Legal Counsel addressed to the Office of Human Resources Management, regarding issues raised by the Court in connection with resolution 61/262. Annex II incorporates in its entirety a document prepared by the Court on the implications of resolution 61/262 in regard to certain provisions of the Statute of the Court, which was transmitted by the President of the Court to the Secretary-General.

2. In order to facilitate the consideration of the issues to be reviewed, the report is structured as follows: section II focuses on the travel and subsistence regulations for the International Court of Justice; section III is devoted to the remuneration and the retirement benefits of the members of the Court and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda; section IV deals with financial implications in respect of the travel and subsistence regulations for the members of the Court, as well as the remuneration and pensions of the members of the Court and the judges of the two Tribunals; and section V addresses the matter of the next comprehensive review.

II. Travel and subsistence regulations for the members of the International Court of Justice

3. The General Assembly, in paragraph 5 of its resolution 61/262, recalled its resolution 37/240 and requested the Secretary-General to review and update the travel and subsistence regulations for the International Court of Justice, taking into account the recommendation of the Advisory Committee on Administrative and Budgetary Questions in paragraph 15 of its report (A/61/612 and Corr.1) and bearing in mind the relevant provisions of the Statute of the Court, and to report thereon to the Assembly, for its approval, at its sixty-second session.

4. In paragraphs 14 and 15 of its report, the Advisory Committee noted that the travel and subsistence regulations approved by the General Assembly in its resolution 37/240, adopted in 1982 (article I, para. 2), provide for first-class accommodation for judges of the International Court of Justice. The Committee pointed out that in the period since that resolution had been adopted, standards of accommodation had evolved considerably. First-class air travel is now restricted to a limited number of cases, and most senior officials are authorized travel at "the class immediately below first class" (ST/AI/2000/20). This change has occurred at the same time that market offers for business-class travel have increased, and in some cases even replaced, first-class travel. In the light of this trend, the Committee was of the opinion that the travel and subsistence regulations approved for the Court by the General Assembly in 1982 should be reviewed and updated in line with the current standards of the Organization.

5. For information purposes, it is recalled that section 4 of administrative instruction ST/AI/2006/4 sets out the standard of accommodation for official travel of United Nations staff members. Under those provisions, the standard of

accommodation for Under-Secretaries-General and Assistant Secretaries-General on official travel is the class immediately below first class.

6. As regards the standard of travel accommodation for the members of the International Court of Justice, the Court has indicated that the treatment of its members has traditionally been at least comparable to that of general directors of specialized agencies and that the travel and subsistence regulations of the Court as currently in force reflect that tradition.

7. The Court has stated that, although first-class travel is authorized under the autonomous regime created by resolution 37/240 for members of the Court, judges in fact almost always travel at a lower standard of accommodation and that most flights departing from Amsterdam do not offer first-class service. The Court has also stated that first-class air journeys are made very rarely, only on long-haul international routes.

8. The Court has also emphasized its view that the current travel policy applicable to serving members of the Court, in particular judges who have opted for non-resident status, forms part of their terms and conditions of service. In effect, on taking office, a judge opting for non-resident status takes into account the fact that, throughout his or her term of office, he or she will be entitled to three first-class trips each year between his or her place of residence and the seat of the Court. Currently, there are four judges who reside in countries very far away from the seat of the Court, for which direct flights are not always available. The question thus arises as to whether, under the terms of the Court's Statute, a judge's conditions of service may validly be modified to his or her detriment during his or her term of office.

9. The Court has further indicated that confusion may have arisen recently as a result of the establishment of international tribunals, as subsidiary organs of the Security Council, whose members are generally treated as Under-Secretaries-General. While in some respects the members of those tribunals and the members of the International Court of Justice enjoy similar treatment, this is in no way a general rule, since the organs (subsidiary organs of the Security Council) to which the former belong are of a very different nature from that of the Court.

10. The Court has concluded that if, despite the above, the standards of travel for its members were to be revised, it would be imperative, given the Court's particular status and administrative independence, as established by the Charter of the United Nations and the Statute of the Court, for the President of the Court to be given the authority to grant derogations on grounds of health or for any other relevant reason.

11. In 2001, the Secretary-General pointed out that, as a result of the action taken by the General Assembly in section I.E of its resolution 44/198, the entitlement under installation grant was discontinued and replaced by the introduction of the assignment grant, effective as from 1 July 1990 (A/C.5/56/14, para. 97). In the light of a number of questions of interpretation concerning the entitlement to installation grant provisions, the Secretary-General proposed, and the Advisory Committee recommended, that the language contained in the travel and subsistence regulations applicable to the members of the Court and the Tribunals, respectively, be updated and that the reference to installation grant be revised to make reference to the assignment grant provisions applicable to senior officials of the Secretariat of the

United Nations. The Assembly accepted the recommendation in its resolution 56/285.

12. In 2006, the Registrar of the International Court of Justice pointed out that article 2, paragraph 2, of the travel and subsistence regulations for the members of the Court, approved by the General Assembly in its resolution 37/240, states that the daily subsistence allowance shall be paid at rates equivalent to the standard subsistence allowance applied to officials of the United Nations Secretariat, plus 40 per cent. As to the assignment grant, article 3, paragraph 1 (a) (ii), entitles resident judges to an amount corresponding to the assignment grant provisions applicable to the senior officials of the Secretariat of the United Nations.

13. The Registrar also pointed out that the General Assembly, in its resolution 58/270, discontinued the practice of paying higher subsistence allowance rates to middle- and senior-level United Nations staff members. However, administrative instruction ST/AI/2003/9, on the implementation of that resolution, stated that United Nations officials other than staff members at a rank equivalent to Assistant Secretary-General or above should be paid daily subsistence at the rate promulgated by the International Civil Service Commission, plus 40 per cent.

14. In view of the potential conflict resulting from General Assembly resolution 37/240, which treats members of the Court as senior United Nations staff members, and resolution 58/270 as implemented in accordance with administrative instruction ST/AI/2003/9, which discontinued the payment of higher subsistence rates to senior United Nations staff members while maintaining those higher subsistence rates for officials other than staff members who are at a rank equivalent to Assistant Secretary-General or above, the Registrar of the Court proposed that the travel and subsistence regulations for assignment grants be revised to conform with the daily subsistence allowance applicable, under article 2, paragraph 2, for the members of the Court. In the opinion of the Court, the daily subsistence rate for purposes of the assignment grant should necessarily correspond to the daily approved rate in the travel and subsistence regulations for members of the Court (that is, the standard rate plus 40 per cent). As this is the current practice, the reference to the amount of the assignment grant being that which is applicable to senior officials of the Secretariat should be removed from the travel and subsistence regulations.

15. As noted above, the current travel and subsistence regulations of the International Court of Justice provide for the cost of first-class accommodation, daily subsistence allowance at rates equivalent to the standard travel subsistence allowance rates applied to officials of the United Nations Secretariat, plus 40 per cent, and payment of removal and assignment grant as per the provisions applicable to senior officials of the Secretariat of the United Nations.

16. As regards revisions to the travel and subsistence regulations, it has been recalled that the members of the Court are elected members of the principal judicial organ of the United Nations (Articles 7 and 92 of the Charter). They are not officials of the United Nations. The conditions of service of the members of the Court are sui generis and as such are set by the General Assembly. It has also been recalled that, in accordance with Article 32, paragraph 7, of the Statute of the Court, the Assembly shall fix the conditions under which members of the Court shall have their travelling expenses refunded. As regards the standard of accommodation provided to the members of the Court, note has also been taken of the comments made by the Court concerning the fact that judges almost always travel at a lower standard of

accommodation than is authorized and that journeys in first class are made by very few judges, usually only on long-haul international routes. In addition, consideration has been given to the Court's view that the current travel policy applicable to members of the Court — in particular, those judges who have opted for non-resident status — forms part of their terms and conditions of service. In this regard, the Court has raised the question as to whether, under the terms of its Statute, a judge's conditions of service may validly be modified to his or her detriment during his or her term of office.

17. The Secretary-General has considered the above facts and recalled that, under the provisions of Article 32, paragraph 7, of the Statute of the International Court of Justice, the General Assembly is responsible for fixing the conditions under which the members of the Court shall have their travelling expenses refunded. This has been done through the adoption of separate travel and subsistence regulations for the members of the Court, distinct from those applicable to officials of the United Nations Secretariat. Considering the sui generis nature of their conditions of service, the Secretary-General would request that consideration be given to maintaining the current standard of accommodation for the members of the Court which provides for first-class accommodation. It is thus recommended that no changes be made to the provisions of article 1, paragraph 2 (a), of the travel and subsistence regulations of the Court.

18. As mentioned above, members of the International Court of Justice are entitled, under article 2, paragraph 2, of the current travel and subsistence regulations, to payment of a daily subsistence allowance while in official travel status at rates equivalent to the standard travel subsistence allowance rates applied to officials of the United Nations Secretariat, plus 40 per cent.

19. As regards the provisions of article 3 of the travel and subsistence regulations, on removal and installation, the Secretary-General would note that by its resolution 56/285, the General Assembly accepted the recommendation to update the regulations, revising the reference to "installation grant" to read "assignment grant" in respect of provisions applicable to senior officials of the Secretariat of the United Nations. Since 1 January 2004, the daily subsistence allowance portion of the assignment grant paid to all eligible senior staff members of the United Nations Secretariat, including those at the Assistant Secretary-General level and above, is computed on the basis of the straight International Civil Service Commission daily subsistence allowance rate for the duty station concerned. While the additional 40 per cent is payable to judges when they are in travel status as provided in article 2, paragraph 2, of the travel and subsistence regulations, it is the view of the Secretary-General that it should not apply in determining the amount of an assignment grant. Accordingly, the amount of the assignment grant should be based on the standard subsistence rates promulgated by the International Civil Service Commission, and thus no change is recommended for article 3, paragraph 1 (a) (ii), of the travel and subsistence regulations of the Court.

III. Remuneration and retirement benefits

A. Remuneration

20. The General Assembly has conducted periodic reviews of the emoluments of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the most recent comprehensive reviews having been undertaken at its sixty-first session. In section III, paragraph 8, of its resolution 59/282, the Assembly requested the Secretary-General to submit a comprehensive report at its sixty-first session, including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that limits the divergence of such remuneration from that of comparable positions of seniority within the United Nations system.

21. In reviewing the level of annual remuneration, it was recalled that as a result of the action taken by the General Assembly in section III, paragraph 4, of its resolution 59/282, the annual salary of the members of the Court and the judges and ad litem judges of the Tribunals was revised from $160,000 to $170,080 per annum, effective 1 January 2005. It was also recalled that the Assembly agreed with the recommendation of the Secretary-General to continue the floor/ceiling mechanism applied to the emoluments of the judges serving in The Hague at the floor/ceiling exchange rates of the euro to the United States dollar, which were kept at the 2003 levels, i.e., €1.0272 (floor) and €1.1128 (ceiling). Based on the revised annual salary of $170,080, or $14,173 per month, the floor exchange rate of €1.0272 to the dollar resulted in a currency floor of €14,559 per month and the ceiling exchange rate of €1.1128 to the dollar resulted in a currency ceiling of €15,772 per month.

22. On the occasion of the review, it was also noted that while the floor/ceiling mechanism provided for some protection against the weakening or strengthening of the dollar vis-à-vis the euro, especially when some flexibility is applied in maintaining certain rates of exchange to shield against devaluations, it did not allow for proper adjustment for the fluctuations of the dollar against the euro. It was thus proposed to introduce a mechanism similar to the one that pertains to salaries of staff in the Professional and higher categories, namely, a net base salary with a corresponding post adjustment amount per index point equal to 1 per cent of net base salary at each level and step of the salary scale.

23. In paragraph 82 of A/61/554, the Secretary-General indicated that this approach would be administratively simple and would respond to the General Assembly's request for the establishment of a mechanism of remuneration based on market exchange rates and local retail price fluctuations that would limit the divergence of such remuneration from that of comparable positions of seniority within the United Nations. However, in this regard, it was also recalled that the base/floor salary scale against which staff in the Professional and higher categories are paid is revised from time to time: increases in the base scale are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment of the post adjustment multipliers. Consolidations took place in March 2001, March 2002 and January 2005. In its report to the Assembly at its sixty-first session the International Civil Service Commission recommended an

increase in the base/floor salary scale of 4.57 per cent, effective 1 January 2007.[1] It was thus suggested that the annual base salary of the members of the Court and the judges and ad litem judges of the Tribunals be set at $177,900, as from 1 January 2007, with a corresponding post adjustment per index point amount of $1,779.00 (i.e., 1 per cent of $177,900), to which would be applied the post adjustment multiplier in effect for the Netherlands or for the United Republic of Tanzania. On the basis of the applicable post adjustment multipliers as at September 2006 for each locality, and taking into account the resulting consolidation of post adjustment multiplier points into the base salary, such an approach would have yielded a total salary (base salary plus post adjustment) of approximately $255,464 for judges serving in the Netherlands and $225,716 for judges of the International Criminal Tribunal for Rwanda serving in the United Republic of Tanzania.

24. In paragraph 83 of A/61/554, the Secretary-General also proposed that on the occasion of future revisions to the base scale applicable to staff in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers, the annual base salary of the members of the Court and the judges and ad litem judges of the Tribunals also be adjusted by the same percentage and at the same time. The Secretary-General also proposed to discontinue the application of the floor/ceiling mechanism to regulate emoluments against the weakening or strengthening of the dollar against the euro, as the application of the post adjustment would reflect the effect of currency fluctuations.

25. In addition, the Secretary-General indicated that, should the General Assembly agree to introduce a post adjustment system, the definitions for salary should revert to the definitions in place when a cost-of-living supplement was paid, i.e., an annual base salary, exclusive of any allowances. That system was in place until 1991. In this respect, it should be recalled that prior to the introduction of the floor/ceiling mechanism, judges' emoluments consisted of an annual base salary plus a cost-of-living supplement. For the purpose of payments to judges ad hoc, annual salary was defined in paragraph 3 of General Assembly resolution 40/257 A as follows: judges ad hoc are to be compensated for each day they exercise their functions one 365th of the sum of the annual base salary and interim cost-of-living supplement payable at the time to a member of the Court. Under this definition, if a post adjustment system were introduced, judges ad hoc would receive both the base salary and the post adjustment element of emolument.

26. The General Assembly, in paragraph 6 of its resolution 61/262, endorsed the proposal of the Secretary-General contained in paragraph 80 of his report (A/61/554), whereby the annual salaries of the members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda would comprise an annual base salary with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which would be applied a post adjustment multiplier, as appropriate, taking into account the proposals of the Secretary-General contained in paragraphs 83 and 84 of his report. However, in paragraph 7 of the same resolution, the Assembly did not agree with the annual net base salary level proposed and decided instead to set, effective 1 January 2007, the

[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 30* (A/61/30), para. 94.

annual net base salary of the members of the Court and the judges and ad litem judges of the Tribunals at $133,500, with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate.

B. Retirement benefits

27. The members of the International Court of Justice are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly.

28. In section VIII, paragraph 6, of its resolution 53/214, the Assembly approved pension scheme regulations for the judges of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda.

29. In paragraph 10 of its resolution 61/262, the General Assembly decided to maintain, as an interim measure, the retirement benefits of the members of the Court and the judges of the Tribunals at the level resulting from the annual base salary decided in section III of its resolution 59/282, and requested the Secretary-General to revise article 1, paragraph 2, of the Pension Scheme Regulations accordingly.

C. Summary of the arguments presented by the International Court of Justice in the review of remuneration and retirement benefits

1. Remuneration

General considerations

30. The salient points and arguments raised by the International Court of Justice, as well as the views provided by the Legal Counsel in his memorandum dated 6 June 2007 in response to a request for advice from the Office of Human Resources Management on a number of issues raised by the Registrar of the Court relating to the adoption of General Assembly resolution 61/262, have been taken into consideration in the review of salaries and pensions of the members of the Court.

31. With regard to the remuneration, in paragraphs 14 to 25 of its paper (see annex II), the Court summarizes the evolution of the emoluments of its members since its inception. In paragraph 25 of its paper, the Court concludes that

> in the early years the Court was treated, so far as the salary of its members was concerned, as befits a principal organ of the United Nations. Gradually, however, the position has deteriorated and the link with salaries of executive heads in Geneva has been lost. For a period the position of judges was deemed to be aligned with that of Under-Secretary-Generals. However, that was based on the assumption that judges would spend only half their time in The Hague. Now that members of the Court are present in The Hague for the greater part of the year in order to examine and adjudicate the numerous cases brought before the Court, that alignment should be reconsidered.

32. In its resolution 61/262, the General Assembly fixed different salaries and retirement benefits for members of the Court, depending on their date of election.

33. In paragraph 7 of that resolution, the Assembly decided that, with effect from 1 January 2007, the annual salary of the members of the Court would comprise an annual net base salary fixed at $133,500 per annum and post adjustment multiplier per index point equal to 1 per cent of the net base salary, to which the post adjustment multiplier for the Netherlands would be applied. As a result, the floor/ceiling exchange rate mechanism designed to protect the judges' salaries from the effects of the dollar's loss of value has been discontinued.

34. Based on the post adjustment multiplier for the Netherlands applicable as at 1 October 2007 (61.5), the annual salary of a new member of the Court who started his or her term of office on 1 January 2007 would be $215,603, i.e., $17,966.88 per month. At the United Nations official rate of exchange for the month of October 2007 (€0.705), this would give an annual salary of €152,000, i.e. €12,667 per month.

35. In paragraph 8 of its resolution 61/262, the General Assembly also decided to maintain, as a transitional measure, in keeping with Article 32, paragraph 5, of the Statute of the Court, the level of annual salary approved in its resolution 59/282 for the current members of the Court "for the duration of their current term of office or until such a time as this amount is overtaken by the application of the revised annual salary system". The annual salary approved by the General Assembly in its resolution 59/282 is $170,080.

36. The Court has noted that paragraph 8 of resolution 61/262 ensured the protection of the current level of annual salary expressed in euros of those members of the Court currently serving their terms of office at the level resulting from the application of the floor exchange rate mechanism. Therefore, the monthly remuneration of members of the Court elected prior to 1 January 2007 is now frozen at an amount of €14,559 until their term of office ends, or until such a time as that amount is overtaken by the application of the revised annual salary system.

37. In paragraph 10 of its resolution 61/262, the General Assembly further decided to maintain, as an interim measure, the retirement benefits of the members of the Court at the level resulting from the annual base salary decided in its resolution 59/282. The Court has commented that, as the retirement benefit of a member of the Court is equal to one half of the annual salary, members of the Court who took up their duties as from 1 January 2001 would receive an annual retirement benefit equal either to $85,040 ($170,080/2) or to €87,354 (€14,559 x 12/2); for new judges elected after 1 January 2007, based on the new annual base salary, the retirement benefit would appear to be $66,750, or, at the United Nations official rate of exchange for May 2007, €48,861.

38. As can be seen from the above, the annual salary of members of the Court will differ considerably depending on their date of election. This situation raises questions of compatibility with the provisions of the Statute of the Court, and in particular with the requirements of the principle of equality underlying the Statute. The lack of equality in the emoluments of judges also has a bearing on pensions, the amount of which generally corresponds to 50 per cent of a judge's salary after a full nine-year term.

39. The International Court of Justice is deeply concerned about the implications that resolution 61/262 might have for the integrity of the Statute and the Rules of Court. The Court does not dispute that the provisions of its Statute attribute certain functions to the General Assembly, such as the provisions governing the election of judges or budgetary matters, which can be interpreted by the General Assembly. However, the Court considers that matters relating to the proper administration of justice require it alone authoritatively to interpret the Statute.

40. The Court has considered that this is the case when, as with the implementation of the transitional measures referred to above, important issues of equality among permanent judges, and also between permanent judges and judges ad hoc, or among judges ad hoc, are concerned.

41. The Court has learned that the requirement under paragraph 7 of resolution 61/262 — that the newly elected judges will have an annual net base salary of $133,500, with a corresponding post adjustment per index point equal to 1 per cent of the net base salary — does not at present have any practical application for the International Tribunal for the Former Yugoslavia. That paragraph, when read in conjunction with the transitional measures in paragraph 8 of the resolution, refers to the election of judges. No elections are envisaged until 2009, and the Tribunal has until then a sufficiency of judges ad litem for its work. If the term of office of its judges were in 2009 to be extended, instead of there being new elections upon the end of their current term, the adverse impact of the provisions of paragraph 7 of resolution 61/262 would even then concern only the International Court of Justice. Furthermore, there may well be no new elections for judges of the International Criminal Tribunal for Rwanda.

42. The Court is therefore caught up in the extraordinary situation in which a resolution drafted to address the spiralling costs of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, apparently will have its negative effects upon the International Court of Justice alone. This adverse application to the Court alone of a provision that presents it with grave constitutional problems was surely not the intention of the Member States when they adopted the resolution.

Equality among members of the Court

43. The Court has noted that the principle of complete equality between judges is one of the pivotal principles of the system of international adjudication of disputes between States. This principle is reflected throughout the Statute of the Court, which, by virtue of Article 9 of the Charter, forms an integral part of the Charter of the United Nations. Article 32, paragraph 5, of the Statute must be interpreted from this perspective. The Court feels that it is its duty, as the principal judicial organ of the United Nations, to draw the General Assembly's attention to potential incompatibilities between its resolution 61/262 and the provisions of the Statute. In this light, the General Assembly might wish to consider certain adjustments.

44. The transitional measure contained in paragraph 8 of resolution 61/262 draws a distinction between current members of the Court and those members elected after 1 January 2007. The General Assembly added this provision with a view to complying with the terms of Article 32, paragraph 5, of the Statute for judges currently in office. The Court, however, regrets to note that such a measure would result in an inequality between members of the Court elected before 1 January 2007

and their colleagues elected after 1 January 2007: the latter would have an income substantially below the current level of remuneration.

45. It is a general principle of law, reflected throughout the Statute and the Rules of Court, that all members of the Court should sit on terms of complete equality. It should be recalled at this point that the parties appearing before the Court are sovereign States, not individuals. This particular feature explains the importance that the Court attaches to the equal representation of States in judicial proceedings. It is therefore absolutely essential for the proper administration of international justice that sovereign States be assured that the judges they have chosen are sitting on terms of complete equality with the other members of the Court. The principle of equality between judges is fundamental for ensuring that the sovereign equality of States, which underlies the current international legal system, is also upheld in judicial proceedings between them. Equality of judges is a core principle in international inter-State dispute resolution, and in particular within the principal judicial organ of the United Nations.

46. According to Article 3, paragraph 1, of the Rules of Court, "The members of the Court, in the exercise of their functions, are of equal status [in the French version, "*sont égaux*"], irrespective of age, priority of election or length of service." The Court has thus concluded that this provision confirms that equality of status and income of members of the Court should be respected. A difference of salary and/or post adjustment between members of the Court depending on their election dates would not be in conformity with that provision, which, once more, only reflects a basic statutory principle.

47. The Court has noted that, should resolution 61/262 and the transitional measure contained in its paragraph 8 be applied as from 1 January 2007, it would be the first time in the history of the Permanent Court of International Justice and the International Court of Justice that members of the Court would receive different salaries.

Equality between members of the Court and ad hoc judges

48. The Court is seriously concerned about the consequences of the aforementioned transitional measure from the perspective not only of equality among members of the Court, but also of that between permanent judges and judges ad hoc appointed by States not having a national on the bench, and among such judges ad hoc.

49. The implementation of the transitional measure in question would also entail unequal treatment between members of the Court elected before January 2007 and ad hoc judges nominated after that date. Unambiguously, Article 31, paragraph 6, of the Statute and Article 7, paragraph 2, of the Rules of Court require that ad hoc judges shall sit on terms of "complete equality" with members of the Court.

50. The principle of equality between permanent judges and ad hoc judges is illustrated by the method of calculation of their compensation. Ad hoc judges receive daily compensation amounting to exactly 1/365th of the net base salary payable to a permanent member of the Court. It is evident from this method of calculation that the treatment of ad hoc judges is aimed at complete equality between members of the Court and judges ad hoc. Any difference in overall treatment is based on a purely objective criterion: the actual days of service to the

Court. This matter of principle is also reflected in the Secretary-General's report on the conditions of service and compensation of the members of the Court issued in 1985 (A/C.5/40/32), when the compensation of judges ad hoc was reviewed. The Secretary-General recalled at that time that the compensation has always been composed of two elements, described as "fee" and "subsistence payment", and up to 1980 was calculated so that their sum was equivalent to 1/365th of the annual salary of a member of the Court. This practice reflects the requirement of "complete equality" expressed in paragraph 6 of Article 31 of the Statute of the Court.

51. Further, the Court argued at the time that the cost-of-living supplement was entirely independent of the place where its members resided or performed their duties and that this should also apply to judges ad hoc. This position was endorsed by the Secretary-General in A/C.5/40/32, clearly in order to ensure the complete equality of judges ad hoc and members of the Court.

Equality among ad hoc judges

52. The Court notes further that the transitional measure referred to above may also give rise to inequality among ad hoc judges sitting in the same case, depending on their date of nomination. Such unequal treatment would of course also be contrary to Article 31, paragraph 6, of the Statute, according to which no inequality should exist between judges ad hoc and members of the Court. If there should be no difference in treatment between members of the Court themselves and the judges ad hoc should be treated equally with members of the Court, it is clear that judges ad hoc should also be treated equally among themselves. This obvious conclusion flows from the same premise, i.e., the need to ensure equality of States "before and in" the Court.

53. In the past, the principle of equality between judges ad hoc has continuously been protected by the Court. The Secretary-General and the General Assembly have also always attempted to fulfil the requirements of complete equality among judges ad hoc when reviewing their compensation.

54. The transitional measure adopted by resolution 61/262 undermines those endeavours aimed at ensuring complete equality. The Court has advised that it has already encountered difficulties raised by the implementation of resolution 61/262 in a pending case and has indicated that it has very recently been faced with a situation of some concern with respect to the treatment to be afforded to judges ad hoc sitting in the case concerning the *Territorial and Maritime Dispute* (*Nicaragua v. Colombia*). Since the compensation to be paid to judges ad hoc for each day on which they perform their duties corresponds to 1/365th of the annual salary of permanent judges, one of the possible consequences of resolution 61/262 could have been a difference in the compensation of the two judges ad hoc in the above-mentioned case, given that one ad hoc judge had been appointed prior to the adoption of the resolution, while the other was appointed in May 2007, i.e., after its adoption.

55. In view of the overall primacy of the Charter (of which the Court's Statute is an integral part) over any other legal commitment, the Court decided to give equal treatment to both judges ad hoc in this case. The President of the Court, in a letter dated 29 May 2007, duly notified the Secretary-General of this decision, informing him that the Court had decided to proceed with the hearings in the case concerning the *Territorial and Maritime Dispute* (*Nicaragua v. Colombia*) "on the basis that the

ad hoc judge now appointed by Nicaragua will receive the same emoluments as the ad hoc judge who had already been appointed by Colombia" prior to the adoption by the General Assembly of resolution 61/262.

56. The Secretary-General, in a letter to the President of the Court dated 13 June 2007, noted that the Court's decision was seemingly inconsistent with resolution 61/262. However, he also recognized that paragraph 7 of that resolution "would appear to be inconsistent with Article 31, paragraph 6, of the Statute, ensuring that ad hoc judges 'take part in the decision on terms of complete equality with their colleagues'". The Secretary-General further indicated that he had been requested to submit a report to the General Assembly at its sixty-second session on options for designing a pension scheme for the members of the Court, and expressed his intention at that point to "suggest possible practical measures for resolving problematic issues" in his report to the General Assembly.

57. Given all of the above, the Court considers that, as the current emoluments of the members now in office have been frozen at €174,708 a year, all judges ad hoc should receive 1/365th of the annual salary of permanent judges (€174,708/365) per working day.

58. The Court also considers that freezing the emoluments of the members now in office results in a decrease in their remuneration in real terms. Article 32, paragraph 5, of the Statute of the Court states that the salaries, allowances and compensation of members of the Court may not be decreased during their term of office. However, freezing the emoluments of current members of the Court at €14,559 per month would, in reality, result in a decrease in their remuneration, because:

(a) There would no longer be the potential for a judge's monthly salary to fluctuate as it had previously between a minimum of €14,559 and a maximum of €15,772 by operation of the floor/ceiling mechanism;

(b) Because the figure decided, €14,559, would in the near future not be subject to adjustment for fluctuating exchange rates and/or increases in the cost of living in the Netherlands.

Re-elected judges

59. Further, the terms of paragraph 8 of resolution 61/262 seem to intend that members of the Court re-elected after the critical date of 1 January 2007 would not benefit from the protection of Article 32, paragraph 5, of the Statute. In this regard, too, paragraph 8 of the resolution gives rise to legal difficulties.

60. The Court considers it accurate to hold that the terms of Article 32, paragraph 5, of the Statute allow for no decrease in salaries during the time of service of a member of the Court. Accordingly, Article 32, paragraph 5, of the Statute applies also to a second term of office for re-elected judges when it is continuous with the first one. Under Article 13 of the Statute of the Court, "members of the Court shall be elected for nine years and may be re-elected". In accordance with Article 20, they must, before taking up their duties, make a solemn declaration. The Rules of Court specify, in application of the provisions of the Statute, that a "member of the Court who is re-elected shall make a new declaration only if his new term is not continuous with his previous one" (Article 4, para. 3). Further, in respect of the applicable rules of precedence, the Rules of Court state

that members of the Court "shall take precedence according to the date on which their terms of office respectively began" (Article 3, para. 2) and that "a member of the Court who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence" (Article 3, para. 4). When a member of the Court is re-elected for a further term immediately after the end of the preceding term, the new term is thus to be considered, in accordance with the Statute and the Rules of Court, as a continuation of the existing term in office. It would be inconceivable for the salaries, allowances and compensation of judges re-elected to continue exercising their functions to be subject to a decrease after re-election.

61. The interpretation upheld by the Court is the only one consistent with the French version of Article 32, paragraph 5, of the Statutes, which is, historically, the original. The French text prescribes any decrease "*pendant la durée des fonctions*" instead of "during the term of office". This interpretation is also in conformity with the object and purpose of the provision concerned.

62. Apart from the legal implications, the Court is deeply concerned about the practical consequences of the regulation. According to the Court's Statute, a judge may be re-elected for a second term. If the new regime of compensation were to be applied for re-elected judges who had already served for nine years, it is doubtful that many of them would consider running for re-election. Since its creation, the Court has had a reasonable balance of old and new members. The Court would regret the loss of this source of great legal and intellectual expertise. The decreasing number of re-elected judges could in time result in a lack of experienced candidates to fill the positions of President and Vice-President and, by the same token, endanger the proper functioning of the Court.

63. The Court further notes that it is not clear from resolution 61/262 whether re-elected judges would acquire their retirement benefits at the level of their first term of office or whether their benefits would be reduced to the new level, if different levels of pensions coexisted, which the Court would view as highly regrettable. Lastly, the Court notes that resolution 61/262 does not indicate the salary for a judge replacing a member of the Court who leaves office during his term because of death or illness or for other reasons.

2. Retirement benefits

64. The International Court of Justice has also recalled that a review of pension benefits to be granted to the members of the Court was presented in the reports of the Secretary-General to the General Assembly at its forty-eighth, forty-ninth and fiftieth sessions. To the last of those reports the Secretary-General annexed a study done by a consulting actuary, the conclusions of which were, inter alia, that the pensionable remuneration of a judge should be defined as being equal to half of the annual salary and that the pension scheme should be non-contributory.

3. Conclusions

65. The conclusion of the International Court of Justice is that resolution 61/262 is not compatible with the basic principles underlying the Statute of the Court, in particular the principle of equality of all judges, nor with its Article 31, paragraph 6, and Article 32, paragraph 5.

66. Those principles and provisions being pivotal principles of the international judiciary, it might prove difficult to apply resolution 61/262 to the members of the Court or to judges ad hoc, without seriously compromising the proper administration of justice. The Court has concluded that the resolution of the General Assembly is not, as it now stands, compatible with the provisions of the Statute, which, as an integral part of the Charter, has primacy over any other text.

4. Recommendations

67. The International Court of Justice has indicated that the functioning of the United Nations depends not only on the institutional independence of its principal organs but also on their cooperation. The cooperation of the principal organs represents, in the same way as their independence, a constitutional principle of the Charter. It is in that spirit that the Court is proposing some alternatives, while respecting the decision of the General Assembly to abandon the floor/ceiling mechanism.

68. The General Assembly, recalling that the Court is the principle judicial organ of the United Nations, has recently reaffirmed the principle whereby the conditions of service and compensation of its judges — who are not officials of the Secretariat — must be separate and distinct from those of Secretariat officials (resolution 61/262). In this context, noting that the General Assembly wished to introduce a more transparent system for fixing the salaries of the members of the Court (see resolution 59/282), the Court would suggest two conceivable means of so doing.

69. The Court has recalled that it is not unprecedented for its members to be remunerated in local currency. Its members were remunerated in that way until that system was abandoned in 1950 because of the very serious devaluation of the Dutch guilder. The members of the Court's predecessor, the Permanent Court of International Justice, were also remunerated in local currency.

70. Since the members of the Court perform their duties in the Netherlands and incur their expenditure mostly in euros, it would seem reasonable to fix their salaries directly in euros, the official currency at the seat of the Court. The situation of the members of the Court is comparable to that of the judges at the European Court of Human Rights in Strasbourg, the Court of Justice of the European Communities in Luxembourg and the International Criminal Court in The Hague.

71. Remuneration in local currency would not only provide transparency but also have the advantage of being simpler and more stable. If the members of the Court were to receive their current emoluments in local currency, it would no longer be necessary to work out complex methods of adjusting the remuneration to take into account both variations in exchange rates and the local cost-of-living index. It would be sufficient, in the regular reviews of salaries for members of the Court, to take only the cost of living into account and to adjust the salaries accordingly. This more transparent, more straightforward and fairer system would ensure the stability of salaries without infringing the basic principles of the Statute of the Court.

72. In the event that such a system were not to be approved, an alternative to fixing the emoluments of judges in euros would be, in the context of the post adjustment system, to increase the amount of annual net base salary in such a way as to ensure that the present amount of remuneration for members of the Court was maintained.

D. Review of the remuneration and retirement benefits for the members of the International Court of Justice and the judges of the Tribunals by the Secretary-General

1. Remuneration

73. Taking into account the Court's comments set out above, as well as the conclusion of the Legal Counsel, in his memorandum of 6 June 2007 to the Office of Human Resources Management, that the concerns raised by both the President and the Registrar of the Court regarding the principle of equality are justified, the Secretary-General would request Member States to consider taking action to remedy this situation.

74. With respect to the level of the annual remuneration, and in order to maintain the basic principles set out in the Statute of the Court, Member States may wish to consider two options, as follows. Considering that the seat of the Court is at The Hague, in the Netherlands, the first option would be to consider establishing the salary of the members of the Court as well as the judges of the Tribunals in euros at the current level, i.e., €174,708 per annum. This option would have the advantage of being simple to administer and would ensure the stability of salaries of the members of the Court. On the occasion of future periodic reviews of the conditions of service and the annual salary of the members of the Court and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, adjustments to salary could take into account movements in the cost of living in the Netherlands.

75. A second option to consider would be to maintain the current system of salary, approved by the General Assembly in its resolution 61/262, whereby the salary of the judges consists of a net base salary and a corresponding post adjustment amount per index point equal to 1 per cent of base salary. However, in order to maintain equality in the level of compensation paid to the judges, an adjustment in the current level of the base salary would have to be made.

76. Following the same logic set out by the Secretary-General in paragraph 82 of A/61/554, the starting point for establishing the net base salary of the judges would be $170,080 per annum. In arriving at this proposed net base salary, it has been recalled that the base/floor salary scale against which staff in the Professional and higher categories are paid is revised from time to time: increases in the base scale are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment of the post adjustment multipliers. Consolidations took place in March 2001, March 2002, January 2005 and January 2007. In its report to the General Assembly at its sixty-second session,[2] the International Civil Service Commission recommended an increase in the base/floor salary scale of 1.97 per cent, effective 1 January 2008. The increase in the base/floor scale would be implemented through the standard method of consolidating post adjustment multiplier points on a no-loss/no-gain basis. Under this approach, the application of the 1.97 per cent to the proposed base salary of $170,080 for the judges would yield a revised proposed annual base salary of $173,430, effective 1 January 2008. It is thus suggested that the annual base salary of the members of the Court and the judges and ad litem judges of the Tribunals be increased by some

[2] Ibid. *Sixty-second Session, Supplement No. 30* (A/62/30), para. 31.

2 per cent and be set at $173,450 (rounded), as from 1 January 2008, with a corresponding post adjustment per index point amount of $1,734.50 (i.e., 1 per cent of $173,450), to which would be applied the post adjustment multiplier in effect for the Netherlands or for the United Republic of Tanzania. Based on applicable post adjustment multipliers as at October 2007 for each respective locality, and taking into account the resulting consolidation of post adjustment multiplier points into the base salary, such an approach would yield a total salary (base salary plus post adjustment) of approximately $274,744 for judges serving in the Netherlands and $239,534 for judges of the International Criminal Tribunal of Rwanda serving in the United Republic of Tanzania.

77. Should the above proposal be considered, as per paragraph 83 of his report A/61/554, the Secretary-General would also propose that on the occasion of future revisions to the base scale applicable to staff in the Professional and higher categories that are effected through the consolidation of post adjustment multiplier points into the base scale with a corresponding readjustment in the post adjustment multipliers, the annual base salary of the members of the International Court of Justice and the judges and ad litem judges of the Tribunals also be adjusted by the same percentage and at the same time.

2. Retirement benefits

78. As regards retirement pensions, it is recalled that in section VIII of its resolution 53/214, the General Assembly decided to set the retirement pension for the members of the International Court of Justice at half the annual salary. As mentioned above, in paragraph 10 of its resolution 61/262, the Assembly decided to maintain, as an interim measure, the retirement benefits of the members of the Court and the judges of the two Tribunals at the level resulting from the annual base salary decided in section III of its resolution 59/282. However, it is also noted that the setting of retirement pensions decided upon by the General Assembly may be subject to possible changes in the system, based on the consideration of the options to be presented to the General Assembly at its sixty-second session.

79. With respect to the level of pension, it is recalled that, in response to a request from the Office of Human Resources Management for advice, the Legal Counsel has indicated that it appears that the Registrar of the Court is correct in his understanding that pensions are payable to members of the Court, at or before the end of the nine-year term of office, who took up their duties as from 1 January 2001, at half the annual salary expressed in euros, or €87,354.

80. Based on the decision of the General Assembly contained in section VIII of its resolution 53/214 to set the retirement pension for the members of the Court at half the annual salary, and considering the possible options proposed above to set the salaries of the judges, should the Assembly approve the first option and decide to set the salaries in euros, at €174,708 per annum, the annual retirement benefit of a member of the Court retiring in 2008 would be €87,354 ($123,906 at the official United Nations operational rate of exchange applicable in October 2007 (€0.705 to $1) with effect from 1 January 2008.

81. Should the General Assembly approve the second option and decide to maintain the current system of salary, approved in its resolution 61/262, and approve a revised annual net base salary of $173,450 per annum, the annual retirement benefit of a member of the Court retiring in 2008 would be $86,725, with effect

from 1 January 2008. A definition of annual salary appears in article 5, paragraph 2, of the Pension Scheme Regulations of the Court, as approved by the General Assembly in its resolution 38/239. For the purposes of the pension scheme, annual salary is defined as annual base, exclusive of allowances.

Tribunals

82. Should the General Assembly decide to take action based on either of the two options set out above relating to setting the annual salary of the judges, the annual retirement benefit of the judges of the Tribunals retiring in 2008 would be affected accordingly.

83. With regard to pension benefits, the Secretary-General notes that the General Assembly approved a pension scheme for the judges of the Tribunals based on the recommendations contained in paragraph 29 of the report of the Advisory Committee on Administrative and Budgetary Questions (A/53/7/Add.6). The Advisory Committee recommended that the pension benefit for the judges of the two Tribunals be based on that applicable to the judges of the International Court of Justice, prorated to account for the difference in the length of the terms of appointment (nine years for the members of the Court versus four years for the judges of the Tribunals). As was the case in 2001 and 2006, the Secretary-General shares the concerns expressed by the two Tribunals that the existing disparity between the pension benefits of their judges and those of the Court represents a discrimination against the judges of the Tribunal not warranted by the statutes of the Tribunals, and that as the Assembly is the sole authority to determine the conditions of service and the pension benefits of the judges of the Tribunals and the judges of the Court, it should be brought once again to the attention of the Assembly for its consideration, in the light of the arguments and proposals put forward by the President and the Registrar of the International Tribunal for the Former Yugoslavia and the President and the Registrar of the International Criminal Tribunal for Rwanda on the occasion of the review undertaken at the sixty-first session.

Pensions in payment

84. Should the General Assembly take action relating to the level of annual salary of the members of the International Court of Justice and the judges of the Tribunals, it is recommended that pensions in payment be adjusted accordingly, effective 1 January 2008.

IV. Financial implications

85. Should the General Assembly take action relating to a change in the annual salary and additional pension payments in respect of former judges and the widows of judges of the International Court of Justice and the judges of the two Tribunals, the programme budget implications of the two options set out above for the biennium 2008-2009 are reflected in the table below. Depending on the option chosen and timing of the decision of the Assembly, the related additional requirements would be considered in the context of the recosting of the relevant proposed budgets for the biennium 2008-2009 prior to determination of the initial appropriations to be approved by the General Assembly in December 2007, or in the context of the relevant performance reports for the biennium 2008-2009.

V. Next comprehensive review

86. In its resolution 56/285, the General Assembly decided that the conditions of service and remuneration for the members of the International Court of Justice, the judges of the two Tribunals and the ad litem judges of the International Tribunal for the Former Yugoslavia would next be reviewed at its fifty-ninth session. In section III, paragraph 9, of its resolution 59/282, the Assembly decided that the conditions of service and remuneration for the members of the Court, the judges of the two Tribunals and the ad litem judges of the Yugoslavia Tribunal would next be reviewed at its sixty-first session. Should the Assembly decide to revert to the three-year review cycle, its next comprehensive review by the Assembly would be undertaken at its sixty-fifth session, in 2010.

Programme budget implications of the proposals contained in paragraphs 74, 76, 81 and 84 above

(United States dollars)

First option	*Additional requirements that would result from the adoption of the recommendations*
Members of the International Court of Justice	
Salary (increase)	0
Pension (increase)	835 500
Total	**835 500**
Judges of the International Tribunal for the Former Yugoslavia	
Salary (increase)	0
Pension (increase)	470 060
Total	**470 060**
Judges of the International Criminal Tribunal for Rwanda	
Salary (increase)	1 594 316
Pension (increase)	404 086
Total	**1 998 402**

Second option	*Additional requirements that would result from the adoption of the recommendations*
Members of the International Court of Justice	
Salary (increase)	808 039
Pension (increase)	60 100
Total	**868 139**

Second option	*Additional requirements that would result from the adoption of the recommendations*
Judges of the International Tribunal for the Former Yugoslavia	
Salary (increase)	700 300
Pension (increase)	20 475
Total	**720 775**
Judges of the International Criminal Tribunal for Rwanda	
Salary (increase)	1 396 946
Pension (increase)	517 915
Total	**1 914 861**

Annex I

Memorandum dated 6 June 2007 from the Legal Counsel to the Office of Human Resources Management

Issues raised by the Registrar of the International Court of Justice concerning conditions of service and compensation for members of the Court

1. This is with reference to a memorandum from Ms. Brzák-Metzler dated 15 May 2007 addressed to Mr. Johnson of this Office, enclosing a copy of a letter dated 19 April 2007 from the Registrar of the International Court of Justice, Philippe Couvreur, addressed to Ms. Brzák-Metzler. In his letter, Mr. Couvreur refers to General Assembly resolution 61/262 of 4 April 2007 on the conditions of service and compensation for non-Secretariat officials and draws the attention of the Office of Human Resources Management to a number of concerns previously raised by the President of the Court, Judge Rosalyn Higgins, in her letter of 3 April 2007 to the President of the General Assembly. The Registrar notes, inter alia, that equality of members of the Court "is one of the leading fundamental principles underlying the Statute of the Court" and stresses that "no discrepancy in treatment can be allowed to exist not only among permanent judges but also between permanent judges and judges ad hoc chosen by States not having a national on the bench, or among judges ad hoc (Article 31)". We also note that the Registrar indicates that a detailed memorandum on the principle of equality among judges will be transmitted to the Office of Human Resources Management shortly. We would appreciate your sharing with this Office a copy of that memorandum, in due course.

2. More specifically, the Registrar seeks confirmation "that the compensation to be paid to judges ad hoc for each day on which they perform their duties corresponds to one 365th of the annual salary of permanent judges".

3. Furthermore, the Registrar seeks confirmation of the amount of €88,854 for pensions payable at or before the end of a nine-year term of office, to judges who took up their duties from 1 January 2001, an amount equal to half of their annual salary of €177,708.

4. On 8 May 2007, President Higgins also addressed a letter to the Secretary General, in which she stressed the "serious legal consequences that would arise from the adoption of that resolution, namely, a violation of principles embodied in the United Nations Charter". She argues that "freezing the emoluments of members of the Court now in office, at the present floor rate, results ipso jure and ipso facto in a decrease in their remuneration". Furthermore, President Higgins stated that one of the legal consequences of the adoption of the resolution is that ad hoc judges in pending and future cases before the Court will not be treated on an equal basis inter se or with the current bench, in violation of Article 31, paragraph 6, of the Court Statute.

5. On 29 May 2007, we received another letter from President Higgins informing us of the Court's decision to proceed with the hearings in the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, "on the basis that the ad hoc judge now appointed for Nicaragua will receive the same emoluments as the ad

hoc judge who had already been appointed for Colombia" prior to the adoption by the General Assembly of its resolution 61/262.

6. You seek the views of the Office of Legal Affairs on these matters in order to assist the Office of Human Resources Management in the preparation of an appropriate reply to Mr. Couvreur.

Salary of members of the Court

7. In its resolution 61/262 of 4 April 2007, the General Assembly, inter alia, decided to set, effective 1 January 2007, the annual net base salary of the members of the Court and the judges of the ad hoc Tribunals at $133,500, with corresponding post adjustment per index point multiplier for the Netherlands or for the United Republic of Tanzania, as appropriate (the primary focus of these comments is on the applicability of the resolution to the members of the International Court of Justice, and not the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda. It also decided, in paragraph 8 of that resolution, to maintain, as a transitional measure and in line with the provision of Article 32, paragraph 5, of the International Court of Justice Statute, the level of annual salary approved in its resolution 59/282 ($170,080) for those members of the Court and judges of the ad hoc Tribunals elected prior to 1 January 2007, "for the duration of their current term of office or until such a time as this amount is overtaken by the application of the revised annual salary system".

8. It appears that the immediate effect of the new system of compensation provided for under paragraph 7 of resolution 61/262 would bring about a decrease in the total annual net salary of the members of the Court elected after 1 January 2007. It is not in the purview of the Office of Legal Affairs to evaluate whether the decision by the Assembly was warranted by objective circumstances, nor to assess the rationale for the resultant decrease in compensation for members of the Court who will take office after 1 January 2007; the purpose of the present observations is to examine whether such a decrease is legally acceptable, both in principle and in terms of the modalities of its application.

9. It should be recalled that pursuant to Article 3 of the Statute, the Court consists of 15 members. In accordance with Article 13, paragraph 1, the members of the Court are elected for a term of nine years, and they may be re-elected. However, Article 13, paragraph 1, also provides that of the members "elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years". This provision ensures that at no point does the term of all 15 judges expire at the same time, but that every three years the term of only five judges expires. Article 31 also allows for the appointment of ad hoc judges chosen by the parties to a dispute.

10. Article 32, paragraph 1, of the Statute stipulates that "Each member of the Court shall receive an annual salary". Pursuant to Article 32, paragraph 5, their "salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office". It is clear from this provision of the Statute that the General Assembly cannot decrease the salary of the members of the Court in the course of an ongoing term of office. At the same time, the Statute does not stipulate that, for a renewed term of office of a re-elected member or for future members of the Court, salaries could not be decreased. Therefore, in

principle, a decrease in salary for future members of the Court would not be inconsistent with the Statute.

11. However, this interpretation appears to collide with the principle of equality of members of the Court, a core principle underlying all provisions of the Statute relating to members of the Court. In particular, this principle finds a clear reflection in Article 31, paragraph 6, of the Statute, emphasizing in express terms that ad hoc judges "shall take part in the decision on terms of complete equality with their colleagues". If this principle applies to ad hoc judges, it is also valid, a fortiori, for permanent members of the Court.

12. Applying an annual salary system to new permanent members of the Court, which would result in a lower annual salary for those members than for members currently sitting on the bench, appears to be contrary to the Statute's underlying principle of equality of members of the Court. Therefore, provided that the revised annual salary system results in a lower annual salary for new members of the Court or lower compensation for newly appointed ad hoc judges than for members of the Court or ad hoc judges elected prior to 1 January 2007, the concerns raised by President Higgins and Registrar Couvreur regarding the principle of equality of members of the Court are justified.

13. In view of the staggered election of judges under Article 13, paragraph 1; the requirement that salaries cannot be decreased during a judge's term of office under Article 32, paragraph 5; and the underlying principle of the equality of judges, the Statute makes it very difficult to reconcile these principles and requirements, specifically in the context of resolution 61/262, setting out the revised annual salary system.

14. Consequently, the modalities of a decrease should duly take into account the principle of equality of treatment.

Compensation of ad hoc judges

15. In accordance with Article 32, paragraph 4, of the Statute, ad hoc judges "shall receive compensation for each day on which they exercise their functions". The historical background to the determination of the amount of compensation was discussed in the report of the Secretary-General to the General Assembly at its fortieth session (A/C.5/40/32, paras. 35-41).

16. It is to be recalled that the General Assembly, in paragraph 3 of its resolution 48/252 A, decided that, with effect from 1 January 1994, the ad hoc judges referred to in Article 31 of the Statute should receive, for each day they exercise their functions, one 365th of the annual salary payable at the time to a member of the Court, i.e., the same prorated remuneration as permanent judges.

17. Concerning your specific question as to whether the compensation to be paid to ad hoc judges for each day on which they perform their duties corresponds to one 365th of the annual salary of permanent judges (€14,559 x 12/365), we are of the view that pursuant to paragraph 7 of General Assembly resolution 61/262, from 1 January 2007 until any further decision is adopted by the Assembly on the matter, the daily compensation of ad hoc judges who were appointed before 1 January 2007 will be that suggested by the Registrar. However, the compensation to be paid to ad hoc judges appointed after 1 January 2007 would appear to correspond to one 365th of the revised annual salary of permanent judges ($133,500/365), as set out in

paragraph 7 of resolution 61/262. This disparity in compensation between ad hoc judges, depending on whether they were appointed to exercise their functions before or after 1 January 2007, is in contravention of paragraph 6 of Article 31 of the Statute stipulating that ad hoc judges "shall take part in the decision on terms of complete equality with their colleagues" (see also para. 22 below).

Role of the Secretary-General in taking action with regard to the General Assembly's adoption of a new annual salary system for non-Secretariat officials

18. By way of background, we note that the General Assembly, in its resolution 59/282, "Special subjects relating to the programme budget for the biennium 2004-2005", requested the Secretary-General to submit a comprehensive report to the Assembly at its sixty-first session, including proposals for a mechanism of remuneration of non-Secretariat officials, i.e., members of the International Court of Justice and judges of the ad hoc Tribunals, based on market exchange rates and local retail price fluctuations, that limits the divergence of such remuneration from that of comparable positions of seniority within the United Nations system. In his report on conditions of service and compensation for officials other than Secretariat officials, the Secretary-General stated that while the currently applicable floor/ceiling mechanism "provides for some protection against the weakening/strengthening of the United States dollar vis-à-vis the euro, especially when some flexibility is applied in maintaining certain rates of exchange to shield against devaluations, it does not allow for proper adjustment for the fluctuations of the United States dollar against the euro" (A/61/554, para. 80).

19. In response to the General Assembly's request for the establishment of a revised mechanism of remuneration of non-Secretariat officials, the Secretary-General proposed in A/61/554 that the Member States consider introducing a mechanism similar to the one that pertains to salaries of staff in the Professional and higher categories, i.e., a net base salary with a corresponding post adjustment amount per index point equal to 1 per cent of net base salary at each level and step of the salary scale. The Secretary-General further suggested that the proposed base salary should be set at the current level of remuneration of the members of the Court, i.e., $170,080.

20. In its report on conditions of service and compensation for officials other than Secretariat officials, the Advisory Committee on Administrative and Budgetary Questions observed that "the proposal of the Secretary-General, which uses the current net remuneration as the base salary, unduly inflates the remuneration calculated under a post adjustment system" (A/61/612, para. 8). It also pointed out that the current net remuneration already included a cost-of-living component. The Advisory Committee further stated that "it is up to the General Assembly to decide whether an increase [in remuneration] should be provided" (para. 9), and it recalled that the conditions of service of the members of the Court are to be determined by the General Assembly, in accordance with Article 32 of the Statute. The Advisory Committee recommended the "elaboration of alternative methods for adjusting remuneration according to market exchange rates and movement of the local cost-of-living index, with a view towards protecting the level of the remuneration, as requested by the General Assembly" (para. 10). The new proposal should be presented to the Assembly at its sixty-second session.

21. In its resolution 61/262, the General Assembly endorsed the proposal of the Secretary-General in paragraph 80 of his report (A/61/554). However, as noted in paragraph 7 above, the Assembly also decided to set, effective 1 January 2007, the revised annual salary system for new members of the Court and the judges of the ad hoc Tribunals and to maintain, as a transitional measure, the level of annual salary approved in its resolution 59/282 for those members of the Court and judges of the ad hoc Tribunals elected prior to 1 January 2007, for the duration of their current term of office or until such a time as that amount is overtaken by the application of the revised annual salary system.

22. Pursuant to Article 32, paragraph 5, of the Statute, salaries, allowances and compensation of the members of the Court shall be fixed by the General Assembly. It is clear from that provision that the determination of the remuneration for members of the Court is not within the purview of the Secretary-General. The Secretary-General therefore does not have the authority to alter or disregard the decision taken by the Assembly in its resolution 61/262.

23. However, in that resolution the Assembly requested the Secretary-General to submit a report at its sixty-second session on options for designing pension schemes for the members of the Court and judges of the ad hoc Tribunals. The Secretary-General should take this opportunity to state in his report that he shares the concerns expressed by the Court, suggest possible practical measures for resolving problematic issues and request the Assembly to take those concerns into consideration.

Pensions payable to judges who took up their duties as from 1 January 2001

24. As to the query concerning pensions, it appears that the Registrar is correct in his understanding that pensions are payable to members of the Court, at or before the end of a nine-year term of office, who took up their duties as from 1 January 2001, at half the annual salary of €177,708 (14,559 x 12), which is €88,854. However, we believe that your Office is better suited to answer the specifics of this question.

25. Please note that we stand ready to provide any clarification on the above comments and observations and, in turn, would appreciate your sharing with us the response of the Office of Human Resources Management to the Registrar on the matter.

Annex II

Document transmitted by the President of the International Court of Justice to the Secretary-General on the implications of General Assembly resolution 61/262 in regard to certain provisions of the Statute of the Court

I. Introduction

1. On 4 April 2007, at its 93rd meeting, the General Assembly adopted, without a vote, resolution 61/262, "Conditions of service and compensation for officials other than Secretariat officials: Members of the International Court of Justice and judges and ad litem judges of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda". Informed of the draft resolution, the President of the Court sent a letter to the President of the General Assembly on 3 April 2007 (A/61/837). In that letter, the President expressed the Court's deep concern that the proposed action regarding emoluments would create inequality among judges, and requested that the Assembly consider postponing action on the text to a later date. The President of the Assembly distributed the letter from the President of the Court to all Permanent Representatives and Permanent Observers to the United Nations on 4 April 2007, before the adoption of the resolution. It is noteworthy that during the 93rd meeting several representatives intervened in order to express their concerns about the issues raised in the letter from the President.

2. On 8 May 2007, the President of the Court addressed a letter to the Secretary-General drawing his attention to the serious legal consequences of the adoption of the resolution for judges ad hoc sitting in the cases pending before the Court and those called upon to sit in future cases. The President underlined that by virtue of Article 31, paragraph 6, of the Court's Statute the judges ad hoc must be treated on an equal basis with the permanent judges, as well as inter se. The President stressed with respect to a pending case that the levels of remuneration of the judges ad hoc would be unequal as a consequence of the adoption of resolution 61/262, because one of the ad hoc judges was appointed prior to the adoption of the resolution while the other ad hoc judge was appointed after.

3. On 19 April 2007, the Registrar of the Court addressed a letter to the Office of Human Resources Management with a copy to the Legal Counsel of the Organization. In his letter, the Registrar addressed different issues of concern and asked for confirmation as to whether the compensation to be paid to judges ad hoc for each day on which they performed their duties corresponded to 1/365th of the annual salary of permanent judges, as fixed by resolution 61/262. By a letter dated 1 June 2007, the Assistant Secretary-General for Human Resources Management provided the Registrar with certain information on the implementation of the resolution, but did not refer to the question of the compensation to be paid to ad hoc judges.

4. The aim of the present note is to put forward certain legal considerations which the members of the Court would like to bring to the attention of those who will have to address the issues related to their conditions of service and compensation, with a view to ensuring future cooperation in this field. Before

turning to an analysis of the situation created by the adoption of the aforementioned resolution, it would be appropriate to recall briefly the position of the Court within the United Nations system and to provide some indications regarding its activities.

A. The International Court of Justice within the United Nations system

5. The International Court of Justice is not just one of the six principal organs of the United Nations, it is its principal judicial organ. Its activities are governed by the Charter of the United Nations and by its Statute, which forms an integral part of the Charter. The mission of the Court is to hear the contentious cases referred to it by States in accordance with its Statute. In so doing, it helps maintain international peace and security, guaranteeing the pacific settlement of disputes between States, as provided in Articles 1 and 2 of the Charter. The Court also responds to requests for advisory opinions submitted to it by authorized organs or specialized agencies of the United Nations, thus contributing to preventive diplomacy and the development of international law.

1. The Court: principal judicial organ of the United Nations

6. By virtue of Article 7 of the Charter, the International Court of Justice is one of the six principal organs of the United Nations. As such, the Court pursues the goals of the United Nations independently of the five other principal organs, particularly of the United Nations Secretariat. As the principal judicial organ, the Court must seek to sustain the confidence of the greatest possible number of States. For each election, the General Assembly and the Security Council are required to bear in mind "that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured" (Article 9 of the Statute). In practice, this principle has found expression in the distribution of the membership of the Court among the principal regions of the globe: Africa, 3 members; Latin America and the Caribbean, 2; Asia, 3; Eastern Europe, 2; Western European and other States, 5. This composition is the statutory guarantee of representation of the Member States of the United Nations; this is duly reflected in the working methods of the Court.

7. It should be noted that in all the cases brought before the Court, with the exception of the limited number of disputes heard by one of the Court's chambers, each judge takes part continuously and on an equal standing throughout all the stages of the proceedings. In this respect, its working methods differ from those of other international judicial organs, which use systems such as that of the judge-rapporteur or have frequent recourse to limited benches. The Court being the only international judicial institution with general jurisdiction and a truly global vocation, it is absolutely indispensable for the principal existing legal systems to be represented at each stage of its decision-making process.

2. Autonomy of the Court

8. By virtue of Article 92 of the Charter and Article 21, paragraph 2, of its Statute, the Court, as principal judicial organ, benefits from a unique degree of autonomy not only in its judicial functions but on the administrative level as well. Thus, the Court is assisted by a Registry, answerable to the Court alone: the Court

itself elects the Registrar and Deputy Registrar, recruits Registry staff members and organizes the Registry. Under Article 12 of the Rules of Court, the President of the Court supervises the administration of the Court. Unlike the other judicial bodies in the system, the Court thus has significant administrative tasks in addition to its eminent judicial duties. This twofold nature of responsibilities also characterizes the Registry. The Registry serves important functions in the administration of justice, specifically bearing responsibility for the Court's external relations, for contacts with parties to cases, and for administrative and preparatory case management; it also advises and assists the Court in its processing of cases. At the same time, the Registry assumes a number of administrative responsibilities usually borne by the secretariats of international organizations.

9. The Court's uniqueness is further reflected in two other ways: first, unlike the other principal organs of the United Nations, the Court has only two official languages, in which it actually works at all times; secondly, unlike the other organs, it has its seat at The Hague.

B. Activity of the Court

10. In April 2006 the Court celebrated its sixtieth anniversary. By looking just at contentious proceedings, it can be observed that in its first 60 years the Court handed down 92 judgments and 40 orders in respect of the indication of provisional measures. It is noteworthy that 38 of the 92 judgments rendered by the Court were handed down in the first 30 years and 54 in the following 30 years. The Court notes the patent increase in its work over time: between April 1986 and April 1996 13 judgments were rendered and between April 1996 and April 2006 30, which is to say, more than twice as many. Moreover, judgments delivered in the last decade account for approximately one third of the total number of judgments handed down since the founding of the Court. The same observation can be made about the orders in respect of the indication of provisional measures made by the Court since 1986. Nine orders in respect of the indication of provisional measures were made between April 1986 and April 1996, and double that number, 18 orders, between April 1996 and April 2006. At the same time, nearly half of the total number of such orders since the founding of the Court have been handed down in the last 10 years.

11. As can be observed, the 10 years leading up to its sixtieth anniversary saw the Court busier than ever before. It should be added that its activity should, obviously, not be measured solely by the number of decisions handed down but also by taking account of the growing complexity, both factual and legal, of the cases involved. The unfailingly reaffirmed confidence that the international community has placed in the Court leads us to believe that it will remain very busy in years to come.

12. The members of the Court would like to point out in this regard that, given its pre-eminent role and ever-increasing activity, the Court, with a budget equalling less than 1 per cent of the total United Nations budget, indisputably represents an exceptionally cost-effective means for peacefully resolving disputes.

13. It would now be appropriate to summarize briefly the history of annual emoluments of members of the Court since 1946 in order to place the consequences of resolution 61/262 in their historical context.

II. Summary of the annual emoluments of members of the Court from 1946 to 2007

14. The emoluments of members of the Permanent Court of International Justice were originally fixed in terms of the guilder, which was the equivalent of two gold francs, hence also linked to the gold-based Swiss franc. The Executive Committee of the Preparatory Commission of the United Nations recommended that the attention of the General Assembly be called to the desirability of ensuring that the real value of the emoluments of the judges of the International Court of Justice was not less than those of the judges of the Permanent Court of International Justice during the period 1936 to 1939, i.e., 45,000 guilders per annum (the Deputy Secretary-General and the Under-Secretary-General of the League of Nations were at the time paid the equivalent of some 25,500 guilders per annum).

15. In 1946, by its resolution 85 (I), the General Assembly set the annual emoluments at 54,000 guilders, equivalent to $20,377, and the net salary of United Nations Principal Directors at $10,000. In 1949, exchange rate changes, coupled with a 15 per cent devaluation of the guilder, reduced the dollar value to $14,211, approximately equivalent to the salary and allowances of a Principal Director.

16. As from 1950, the emoluments of members of the Court were expressed in dollars, and from 1950 to 1973 were equivalent to the net salary of the executive head of a specialized agency or executive heads of the secretariat in Geneva. The judges' salaries were fixed at $20,000 per annum from 1950 to 1961; $25,000 per annum from 1962 to 1967; $30,000 per annum from 1968 to 1971; and $35,000 per annum in 1972 and 1973.

17. In 1974, the Secretary-General having recommended aligning judges' salaries with those of Under-Secretaries-General (on the assumption that judges would spend half their time in The Hague) (see A/C.5/1516), the General Assembly raised judges' emoluments to $45,000 (the net remuneration of an Under-Secretary-General in The Hague would have been approximately $46,000, excluding pension contributions) (resolution 3193 B (XXVIII)). In 1976, judges' emoluments were raised to $50,000.

18. In 1977, a cost-of-living system was introduced: members of the Court were to receive, in addition to their base salary, an annual cost-of-living supplement that, on the basics of the arithmetical average of post adjustment classifications for 51 locations around the world and in The Hague, would be adjusted in January of each year in proportion to upward or downward changes of 5 per cent or more in the cost of living. As a result, judges' emoluments were raised in 1977 to $53,000 ($50,000 + $3,000) (the remuneration of an Under-Secretary-General in Geneva was $66,316, excluding pension contributions).

19. From 1977 to 1981, the base salary remained at $50,000, but the cost-of-living supplement was adjusted to $9,000 in 1978 (total: $59,000), to $16,500 in 1979 (total: $66,500) and to $24,500 in 1980 (total: $74,500).

20. In 1981, the base salary was raised to $70,000 and the cost-of-living supplement fixed at $12,000, making total emoluments of $82,000. In 1986, the base salary was again raised to $82,000 and the cost-of-living supplement fixed at $3,000, making total emoluments of $85,000.

applicable as at 1 May 2007 (55.4), the annual salary of a new member of the Court who started his or her term of office on 1 January 2007 would be $207,459, i.e., $17,288.25 per month. At the United Nations official rate of exchange for May 2007 (€0.732), this would give an annual salary of €151,860, i.e., €12,655 per month.

28. In paragraph 8 of its resolution 61/262, the General Assembly also decided to maintain, as a transitional measure, in keeping with the provisions of Article 32, paragraph 5, of the Statute of the Court, the level of annual salary approved in its resolution 59/282 for the current members of the Court "for the duration of their current term of office or until such a time as this amount is overtaken by the application of the revised annual salary system". The annual salary approved by the General Assembly in its resolution 59/282 is $170,080. The Office of Human Resources Management indicated its understanding that paragraph 8 of the resolution ensured the protection of the current level of annual salary expressed in euros of those members of the Court currently serving their terms of office at the level resulting from the application of the floor exchange rate mechanism. Therefore, the monthly remuneration of members of the Court elected prior to 1 January 2007 is now frozen at an amount of €14,559 until their term of office ends, or until such a time as this amount is overtaken by the application of the revised annual salary system.

29. In paragraph 10 of its resolution 61/262, the General Assembly further decided to maintain, as an interim measure, the retirement benefits of the members of the Court at the level resulting from the annual base salary decided in its resolution 59/282. As the retirement benefit of a member of the Court is equal to one half of the annual salary, members of the Court who took up their duties as from 1 January 2001 would receive an annual retirement benefit equal either to $85,040 ($170,080/2) or to €87,354 (€14,559 x 12/2);[a] for new judges elected after 1 January 2007, based on the new annual base salary, their retirement benefit would appear to be $66,750 or, at the United Nations official rate of exchange for May 2007, €48,861.

30. As can be seen from the above, the annual salary of members of the Court will differ considerably depending on their date of election. This situation raises questions of compatibility with the provisions of the Statute of the Court, and in particular with the requirements of the principle of equality underlying the Statute. The lack of equality in the emoluments of judges also has a bearing on pensions, the amounts of which generally correspond to 50 per cent of a judge's salary after a full nine-year term.

A. General considerations

31. While the International Court of Justice, the principal judicial organ of the United Nations, is fully supportive of the efforts made to enhance the cost-effectiveness of the United Nations, it is deeply concerned about the implications

[a] In response to the Registrar's enquiries as to which of these two possible interpretations was likely to be adopted, the Office of Human Resources Management expressed its preference for the former. It indicated that, in its opinion, the annual retirement benefit of judges who have served a full nine-year term continues to be linked to the annual remuneration decided by the General Assembly in its resolution 59/282 expressed in dollars and should thus be equal to one half of the annual salary of $170,080, or $85,040.

that the recently adopted General Assembly resolution might have for the integrity of the Statute and the Rules of Court, the misinterpretation of which by the General Assembly might have led to the adoption of resolution 61/262.

32. The Court does not dispute that the provisions of its Statute attributing certain functions to the General Assembly, such as those provisions governing the election of judges or budgetary matters, can be interpreted by the General Assembly.[b] However, the Court considers that matters relating to the proper administration of justice require it alone to interpret authoritatively the Statute. This is the case when, as with the implementation of the transitional measure referred to above, important issues of equality among permanent judges, but also between permanent judges and judges ad hoc, or among judges ad hoc, are concerned.

B. Equality among members of the Court

33. The principle of complete equality among judges, as more fully explained below, is one of the pivotal principles of the system of international adjudication of disputes between States. This principle is reflected throughout the Statute of the Court, which, by virtue of Article 92 of the Charter, forms an integral part of the Charter. Article 32, paragraph 5, of the Statute must be interpreted in this perspective. The Court feels that it is its duty, as the principal judicial organ of the United Nations, to draw the General Assembly's attention to potential incompatibilities between resolution 61/262 and the provisions of the Statute. The Assembly might wish to consider certain adjustments in this respect.

34. The transitional measure contained in paragraph 8 of the resolution draws a distinction between current members of the Court and those members elected after 1 January 2007. The General Assembly added this provision to its resolution with a view to complying with the terms of Article 32, paragraph 5, of the Statute for judges currently in office. However, the Court regrets to note that such a measure, if applied, would result in an inequality between members of the Court elected before 1 January 2007 and their colleagues elected after 1 January 2007. The latter would have an income substantially below the level of the current remuneration.

35. It is a general principle of law, reflected throughout the Statute and the Rules of Court, that all members of the Court should sit on terms of complete equality. It should be recalled at this point that the parties appearing before the Court are sovereign States, not individuals. This particular feature explains the importance that the Court attaches to the equal representation of States in the judicial proceedings. As set out in further detail in section C below, it is therefore absolutely essential for the proper administration of international justice that sovereign States be assured that the judges they have chosen are sitting on terms of complete equality with the other members of the Court. The principle of equality between judges is fundamental to ensure that the sovereign equality of States, which underlies the current international legal system, is also upheld in judicial proceedings between them. Equality of judges is a core principle in international inter-State dispute resolution and in particular within the principal judicial organ of the United Nations. The Member States of the United Nations, enjoying sovereign equality in accordance with Article 2, paragraph 1, of the Charter, are fully entitled to assume

[b] Sh. Rosenne, *The Law and Practice of the International Court*, 4th ed., 2006, vol. I, p. 78.

that all the judges of the International Court of Justice, representing the main forms of civilization and the principal legal systems of the world,[c] are sitting in total equality when a dispute between sovereign States is brought before the principal judicial organ of the United Nations. In point of fact, the Court currently has before it 12 cases involving 13 States from the Group of 77 and China, one Western European State and six Eastern European States.[d]

36. According to Article 3, paragraph 1, of the Rules of Court, "The Members of the Court, in the exercise of their functions, are of equal status [in the French version, "*sont égaux*"], irrespective of age, priority of election or length of service." This provision confirms that equality of status and income of members of the Court should be respected. A difference of salary and/or post adjustment between members of the Court depending on their election dates would not be in conformity with that provision, which, once more, only reflects a basic statutory principle.

37. This conclusion is fully supported by the drafting history of the Statute of the Permanent Court of International Justice. It was thus considered absolutely essential for the proper administration of international justice and the legitimacy of a court with a global vocation for the principle of the equality of States to be reflected in the composition of the Court. Although members of the International Court of Justice, like those of its predecessor, are completely independent of their States of origin and sit as individuals, it would be inconceivable for there to be differences in the way in which they are treated. In the words of Mr. Hagerup, Norwegian member of the Committee of Jurists, entrusted with the preparation of a draft Statute for the Permanent Court of International Justice, in 1920:

> in the domain of law there is one indisputable principle, that of the equality of sovereign States ... The principle of the equality of States is the Magna Charta of the smaller States and it is an outstanding juridical argument ... [I]f one tried to introduce an element of inequality into the scheme for the Court of Justice, this scheme would fall to the ground as did the scheme of 1907.[e]

The League of Nations and the drafters of the Statute were conscious of the fact that any international judicial body in which the principle of equality was not respected would necessarily fail, as had been the case in 1907.[f]

38. The specific issue of the equality of judges with regard to their emoluments was discussed only briefly at the meetings of the Committee of Jurists in 1920, clear as it was at that time that a broad consensus existed on the point. This is illustrated,

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[c] See Article 9 of the Statute of the Court.

[d] From the Group of 77 and China: Argentina, Congo, Democratic Republic of the Congo, Colombia, Costa Rica, Djibouti, Guinea, Honduras, Malaysia, Nicaragua, Singapore, Uganda, Uruguay; from Western Europe: France; from Eastern Europe: Croatia, Hungary, Serbia, Slovakia, Romania, Ukraine.

[e] By this Mr. Hagerup was referring to the tentative creation of a permanent international court at the Second Hague Conference in 1907. Minutes of the proceedings of the Committee of Jurists, 16 June 24 July 1920, 8th meeting, p. 102.

[f] See "Report on the draft scheme of the Advisory Committee of Jurists for the establishment of the Permanent Court of International Justice", mentioned in Article 14 of the Covenant submitted to the Council of the League of Nations by the French Representative, Léon Bourgeois, 3 August 1920. Permanent Court of International Justice, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 23.

for example, by the following intervention of Mr. Loder, the Dutch member of the Committee, who in 1922 became the President of the Permanent Court of International Justice: "Mr. Loder drew attention to the difficulties which might arise from the fact that the Assembly would be called upon from time to time to adjust the salaries of judges. Two judges sitting at the same time might receive different salaries. This would not be admissible."[g]

39. The report of the Third Committee of the Assembly of the League of Nations also reflected that position. The report explicitly stated that "to ensure equal position to all the members of the Court of International Justice, by neutralizing the different degrees in which their salaries might be affected by taxation in various countries, the Committee proposes that allowances are to be free of taxation". The Committee further proposed "that the League of Nations should reimburse the Members of the Court for any taxes which they may have been obliged to pay" in accordance with fiscal laws applied in different countries.[h] The resolution of the Assembly of the League of Nations on the salaries of judges clearly establishes that the League of Nations endorsed this recommendation fixing the same salaries and allowances, free of all tax, for all "ordinary judges".[i] In 1945, the International Court of Justice was established by the Charter of the United Nations. Article 92 of the Charter states that the new Court should work on the basis of the Statute of its predecessor. Thus all the fundamental principles underlying the Statute of the Permanent Court of International Justice were necessarily incorporated into the Statute of the International Court of Justice, including the principle of equality of members of the Court. In fact, the issue was not raised again.

40. It might be noted that, should resolution 61/262 and the transitional measure contained in its paragraph 8 be applied as from 1 January 2007, it would be the first time in the history of the Permanent Court of International Justice and the International Court of Justice that members of the Court would receive different salaries.

C. Equality of ad hoc judges

41. The Court is seriously concerned about the consequences of the aforementioned transitional measure from the perspective not only of equality among members of the Court, but also of that between permanent judges and judges ad hoc appointed by States not having a national on the bench, and among such judges ad hoc.

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[g] Minutes of the proceedings of the Committee of Jurists, 16 June-24 July 1920, 8th meeting, pp. 196-197.

[h] "Salaries of members of the Court", report to the Assembly by H. Lafontaine, Permanent Court of International Justice, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 276.

[i] Resolution carried by the Assembly at its 31st and final meeting on 18 December 1920; Permanent Court of International Justice, documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court, 1920, p. 284.

1. Equality between members of the Court and ad hoc judges

42. It is obvious that the implementation of the transitional measure in question would also entail unequal treatment between members of the Court elected before January 2007 and ad hoc judges nominated after that date. Unambiguously, Article 31, paragraph 6, of the Statute and article 7, paragraph 2, of the Rules, require that ad hoc judges shall sit on terms of "complete equality" with members of the Court.[j] The rationale is the same as that requiring full equality among members of the Court.

43. The principle of equality between permanent judges and ad hoc judges is illustrated by the method of calculation of their compensation. Ad hoc judges receive daily compensation amounting to exactly 1/365th of the net salary payable to a permanent member of the Court. It is evident from this method of calculation that the treatment of ad hoc judges is aimed at complete equality between members of the Court and judges ad hoc. Any difference in overall treatment is based on a purely objective criterion: the actual days of service to the Court. This matter of principle is also reflected in the Secretary-General's report of 1985 on the conditions of service and compensation of the members of the Court, when the compensation of judges ad hoc was reviewed. The Secretary-General recalled at that point that the "compensation has always been composed of two elements, described as 'fee' and 'subsistence payment' and, up to 1980, was so calculated that their sum was equivalent to 1/365th of the annual salary of a member of the Court. This practice reflects the requirement of 'complete equality' expressed in paragraph 6 of Article 31" (A/C.5/40/32, para. 36).

44. Further, the Court had argued at the time that the cost-of-living supplement was entirely independent of the place where its members resided or performed their duties and that this should also apply to judges ad hoc. This position was endorsed by the Secretary-General in his report to the General Assembly dated 22 October 1985 (A/C.5/40/32) clearly in order to ensure complete equality of judges ad hoc and members of the Court.[k]

45. It is further apparent from the drafting history of the Court's Statute that the principle of equality between members of the Court and ad hoc judges was always considered a cardinal principle within the functioning of the Court. The rationale of introducing judges ad hoc into the Court might explain why the principle of equality between ad hoc judges and members of the Court is so utterly important within the functioning of the Court. Indeed, States parties to a case were allowed to designate a

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[j] Pieter Kooijmans, "Article 31", in Andreas Zimmermann, Christian Tomuschat, Karin Oellers-Frahm (eds.), *The Statute of the International Court of Justice — A Commentary*, Oxford University Press, 2005, pp. 496-506 (498 and 501), and Carlos Espósito, "Article 32", ibid., pp. 507-523 (520).

[k] See also resolutions 40/257 of 18 December 1985, 48/252 of 26 May 1994, 50/216 of 23 December 1995 and 53/214 of 18 December 1998.

judge ad hoc when they had no judge of their nationality on the bench, with the precise aim of ensuring equality of the parties before the Court and in the Court.[l]

46. Thus, as early as 1922 it was understood that:

> Judges summoned under Article 31 are to take part in any decision on an equal footing with their colleagues. Consequently, they will have rights and privileges in all respects equal to those of the regular judges. Any differentiation in treatment would necessarily involve a differentiation in standing, and such differentiation would render the system of national judges provided for in this Article a complete failure.[m]

2. Equality among judges ad hoc

47. The Court notes further that the transitional measure referred to above may also give rise to inequality among ad hoc judges sitting in the same case, depending on their date of nomination. Such unequal treatment would of course also be contrary to Article 31, paragraph 6, of the Statute. As emphasized above, according to Article 31, paragraph 6, no inequality should exist between judges ad hoc and members of the Court. If there should be no difference in treatment among members of the Court themselves and the judges ad hoc should be treated equally with members of the Court, it is clear that judges ad hoc should also be treated equally among themselves. This obvious conclusion flows from the same premise, i.e., the need to ensure equality of States "before and in" the Court.

48. In the past, the principle of equality among judges ad hoc has continuously been protected by the Court. The Secretary-General and the General Assembly have also always attempted to fulfil the requirements of complete equality among judges ad hoc when reviewing their compensation.

49. The transitional measure adopted in resolution 61/262, should it be applied, would, once again, undermine those endeavours aimed at ensuring complete equality.

50. These difficulties raised by the implementation of the resolution are not of a purely theoretical kind; the Court has already encountered them in practice in a pending case. As already indicated above, the Court has very recently been faced with a situation of some concern with respect to the treatment to be afforded to the judges *ad hoc* sitting in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.[n] Since the compensation to be paid to judges ad hoc for each day on which they perform their duties corresponds to 1/365th of the annual salary of permanent judges, one of the possible consequences of resolution 61/262 could have been a difference in the compensation of the two judges ad hoc in the above-mentioned case, given that one ad hoc judge had been appointed prior to the

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[l] See in this respect Pieter Kooijmans, "Article 31", in Andreas Zimmermann, Christian Tomuschat, Karin Oellers-Frahm (eds.), *The Statute of the International Court of Justice — A Commentary*, Oxford University Press, 2005, pp. 496-506 (501); B. Schenck von Stauffenberg, *Statut et règlement de la Cour permanente de Justice internationale; Eléments d'interprétation*, Berlin, 1934, pp. 180 et seq. (183); M. Hudson, *The Permanent Court of International Justice 1920-1943, A Treatise*, New York, 1943, p. 354.

[m] *Acts and Documents, Series D, No. 2*, Preparation of the Rules of Court, minutes, annex 42, p. 336.

[n] The hearings were held from 4 June to 8 June 2007.

adoption of the resolution, while the other was appointed in May 2007, after its adoption.

51. In view of the overall primacy of the Charter (of which the Court's Statute is an integral part) over any other legal commitment, the Court has decided to give equal treatment to both judges ad hoc in this case. The President of the Court, in a letter dated 29 May 2007, duly notified the Secretary-General of this decision, informing him that the Court had decided to proceed with the hearings in the case concerning the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* "on the basis that the ad hoc judge now appointed by Nicaragua will receive the same emoluments as the ad hoc judge who had already been appointed by Colombia" prior to the adoption by the General Assembly of resolution 61/262. The Secretary-General, in a letter to the President of the Court dated 13 June 2007, noted that the Court's decision was seemingly inconsistent with resolution 61/262. However, he also recognized that paragraph 7 of that resolution "would appear to be inconsistent with Article 31, paragraph 6, of the Statute, ensuring that ad hoc judges 'take part in the decision on terms of complete equality with their colleagues'". The Secretary-General further indicated that he had been requested to submit a report to the General Assembly at its sixty-second session on options for designing a pension scheme for the members of the Court, and expressed his intention at that point to "suggest possible practical measures for resolving problematic issues" in his report to the General Assembly.

52. Given all of the above, the Court considers that, the current emoluments of members of the Court having been fixed at €174,708 a year, all judges ad hoc should receive 1/365th of the annual salary of permanent judges (€174,708/365) per working day.

D. Other issues to be considered

1. Decrease in salaries

53. Freezing the emoluments of members of the Court now in office results in a decrease in their remuneration in real terms. Article 32, paragraph 5, of the Statute of the Court states that the salaries, allowances and compensation of members of the Court may not be decreased during their term of office. However, freezing the emoluments of current members at €14,559 per month would, in reality, result in a decrease in their remuneration because:

(a) There would no longer be the potential for a judge's monthly salary to fluctuate as it had previously between a minimum of €14,559 and a maximum of €15,772 by operation of the floor/ceiling mechanism;

(b) The figure decided, €14,559, would in the near future not be subject to adjustment for fluctuating exchange rates and/or increases in the cost of living in the Netherlands.

54. It may be noted that, in the past, the International Court of Justice has expressed the view that downward adjustments to supplementary cost-of-living payments not forming part of the salary would, as such, not be *a priori* contrary to the provisions of the Statute.[o] The adjustment must, however, be based on objective criteria, such as a reduction of living expenses in The Hague. Downward adjustments must be limited to supplementary cost-of-living payments; they must also in any case respect the Statute of the Court, and, in particular its Article 32, paragraph 5, as well as the principle of total equality among judges. In a similar vein, the Court accepted, within the floor/ceiling system, which replaced the supplementary cost-of-living payments, that the monthly emoluments of members of the Court would vary, including downwards, in order to take into account an objective factor similar to the cost of living: fluctuating exchange rates.

2. Re-elected judges

55. Further, the terms of paragraph 8 of resolution 61/262 seem to intend that members of the Court re-elected after the critical date of 1 January 2007 would not benefit from the protection of Article 32, paragraph 5, of the Statute. In this regard, too, paragraph 8 of the resolution gives rise to legal difficulties.

56. The Court considers it accurate to hold that the terms of Article 32, paragraph 5, of the Statute allow for no decrease in salaries during the time of service of a member of the Court. Accordingly, Article 32, paragraph 5, applies also to a second term of office for re-elected judges when it is continuous with the first one. Under Article 13 of the Statute, "Members of the Court shall be elected for nine years and may be re-elected". In accordance with Article 20, they must, before taking up their duties, make a solemn declaration. The Rules of Court specify, in application of the provisions of the Statute, that a "member of the Court who is re-elected shall make a new declaration only if his new term is not continuous with his previous one" (Article 4, para. 3). Further, in respect of the applicable rules of precedence, the Rules of Court state that members of the Court shall "take precedence according to the date on which their terms of office respectively began" (Article 3, para. 2) and that "a Member of the Court who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence" (Article 3, para. 4). When a member of the Court is re-elected for a further term immediately after the end of the preceding term, the new term is thus to be considered, in accordance with the Statute and the Rules of Court, a continuation of the existing term of office. It would be inconceivable for the salaries, allowances and compensation of judges re-elected to continue exercising their functions to be subject to a decrease after re-election.

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[o] See the views expressed by the President of the Court in 1976, referred to in Sh. Rosenne, *The Law and Practice of the International Court*, 4th ed., 2006, vol. II, p. 456. See also resolution 31/204 of 22 December 1976, para. 2, whereby the General Assembly:

> "2. *Decides further*, with effect from 1 January 1977, that ... members of the International Court of Justice may also receive, in addition to their annual salary as defined in Article 32, paragraphs 1 and 5, of the Statute of the Court, an interim cost-of-living supplement, which shall not be deemed to form part of the said salary and the amount of which shall be governed by the provisions set out in paragraph 17 of the report of the Advisory Committee".

57. The interpretation upheld by the Court is the only one consistent with the French version of Article 35, paragraph 2, which is, historically, the original. The French text proscribes any decrease "*pendant la durée des fonctions*" instead of during the "term of office". This interpretation is also in conformity with the object and purpose of the provision concerned.

58. Apart from the legal implications, the Court is deeply concerned about the practical consequences of this regulation. According to the Court's Statute, a judge may be re-elected for a second term. If the new regime of compensation were to be applied for re-elected judges who had already served for nine years, it is doubtful that many of them would consider running for re-election. Since its creation, the Court has had a reasonable balance of old and new members. The Court would regret the loss of this source of great legal and intellectual expertise. The decreasing number of re-elected judges could in time result in a lack of experienced candidates to fill the positions of President and Vice-President and, by the same token, endanger the proper functioning of the Court.

59. The Court further notes that it is not clear from the resolution whether re-elected judges would acquire their retirement benefits at the level of their first term of office or whether their benefits would be reduced to the new level, if different levels of pensions coexisted, which the Court would view as highly regrettable. Lastly, the Court notes that the resolution does not indicate the salary for a judge replacing a member of the Court who leaves office during his term because of death, illness or other reasons.

E. Further issues

60. In its resolution 61/262, the General Assembly requested the Secretary-General to submit three reports at its sixty-second session. The Court wishes to make a few remarks with regard to issues that have not yet been dealt with above.

1. Revision and update of the travel and subsistence regulations for the International Court of Justice

61. In this respect, it is to be emphasized that members of the Court are not officials of the United Nations and that the Court's staff does not belong to the Secretariat. In accordance with Article 32, paragraph 7, of the Statute of the Court, the conditions of travel of members of the International Court of Justice and the Registrar have always been considered by the General Assembly on an ad hoc basis. Treatment of members of the Court has traditionally been at least comparable to that of general directors of specialized agencies. The travel and subsistence regulations of the Court as currently in force, which reflect that tradition, were adopted on 13 December 1982 by the General Assembly in its resolution 37/240.

62. Although first-class travel is authorized under the autonomous regime created by that resolution for members of the Court, judges in fact almost always travel at a lower standard. In any event, most flights departing from Amsterdam do not offer first-class service. It should be noted that the very rare journeys in first class are made only on long-haul intercontinental routes, thus allowing a judge to return immediately to effective work on arrival in The Hague.

63. Moreover, it is to be emphasized that the current travel policy applicable to members of the Court, in particular to judges who have opted for non-resident status, forms part of their terms and conditions of service. In effect, on taking up office, a judge opting for non-resident status takes into account the fact that, throughout his term of office, he will be entitled to three first-class trips each year between his place of residence and the seat of the Court. Currently, the four non-resident judges reside in countries very far away from the seat of the Court, for which direct flights are not always available. The question thus arises as to whether, under the terms of the Court's Statute, a judge's conditions of service may validly be modified to his detriment during his term of office.

64. Confusion may have arisen recently as a result of the establishment of international tribunals, as subsidiary organs of the Security Council, whose members are generally treated as Under-Secretaries-General. While in some respects the members of those tribunals and the members of the International Court of Justice enjoy similar treatment, this is in no way a general rule, since the nature of the organs (subsidiary organs of the Security Council) to which the former belong is very different from that of the Court.

65. If, despite the above, the standards of travel of members of the Court were to be revised, it would be imperative, given the Court's particular status and administrative independence, as established by the Charter and the Statute of the Court, for the President of the Court to be given the authority to grant derogations on grounds of health or for any other relevant reason.

2. Options for devising a pension scheme for, inter alia, the members of the International Court of Justice

66. It might be useful to recall that in 1946 it was admitted that the costs of pensions of members of the Court were to be borne by the United Nations, i.e., members of the Court would not have to contribute to the pension fund of the Organization (see A/110). This principle was justified by the analogy, inter alia as regards pensions, between judges of the International Court of Justice and the Secretary-General of the United Nations. The main reason behind the principle of non-contribution was that members of the Court, before taking office, had to abandon a career they would not be able to resume when they ceased to be judges.[p] The same reasoning was made with regard to the pension plan for the Secretary-General.

67. In this respect, the introduction of a defined contribution scheme would be a total novelty, without precedent since 1922. Moreover, the establishment of such a scheme would once again raise a question of principle under the Statute, as, even if a transitory regime were to be adopted with a view to avoiding the decrease in emoluments which judges currently in office would undergo as a result of the payment of contributions, it would still result in a dual regime with respect to the emoluments, contrary to the principle of the equality of judges.

68. It should be pointed out that a review of pension benefits to be granted to members of the International Court of Justice was presented in the reports of the

[p] Memorandum of the Registrar of the Court dated 13 June 1946, appendix A to the report of the Secretary-General (A/110), p. 294. See also Sh. Rosenne, *The Law and Practice of the International Court of Justice*, 4th ed., 2006, vol. I, p. 474.

Secretary-General to the General Assembly at its forty-eighth, forty-ninth and fiftieth sessions. To the last of those reports the Secretary-General annexed a study made by a consulting actuary, the conclusions of which were, inter alia, that the pensionable remuneration of a judge should be defined as being equal to half of the annual salary and that the pension scheme should be non-contributory (A/C.5/50/18).

F. Conclusion

69. The Court notes with regret that it was not consulted, as has been the usual practice, regarding the adoption and application of the new system for calculating the emoluments of judges when resolution 61/262 was being prepared. Over the years, such consultation had proved to be beneficial and would probably have made it possible to avoid the difficulties now raised by the resolution. The Court hopes that, in the light of the above, some uncertainties as to the content and meaning of certain provisions of the Statute and of the Rules of Court have been elucidated.

70. Regrettably, resolution 61/262 is not compatible with the basic principles underlying the Statute of the Court, in particular the principle of equality of all judges, nor with its Article 31, paragraph 6, and Article 32, paragraph 5.

71. Those principles and provisions being pivotal principles of the international judiciary, it might prove difficult to apply the resolution adopted by the General Assembly on 4 April 2007 to the members of the International Court of Justice or to judges ad hoc without seriously compromising the proper administration of justice.

72. The resolution of the General Assembly is not, as it now stands, compatible with the provisions of the Statute of the International Court of Justice, which, as an integral part of the Charter, has primacy over any other text. The Court is more than willing to participate in the elaboration of necessary adaptations with a view to bringing the resolution in line with the Statute.

73. The Court's Statute was obviously not interpreted in full awareness of all of its legal implications by the drafters of the resolution. The Court notes an increasing tendency to ignore its basic specificities. In particular, in the financial field, the huge costs of the criminal tribunals have progressively led competent authorities to focus on the problems of those tribunals and to adopt solutions aimed only at resolving them. Unfortunately, as a result of oversimplification, those solutions have, more than once, been mechanistically extended to the International Court of Justice, without taking into account its very different nature and functions. This has repeatedly, over the past years, created unnecessary difficulties for the Court. Resolution 61/262 is a clear example of this. The problems raised by the resolution for the Court, because it is the principal judicial organ of the United Nations, the mission of which is to resolve disputes between sovereign States, are not necessarily as serious for the tribunals. In order to avoid similar difficulties in the future, the Court requests the decoupling of the conditions of service of members of the Court and of the tribunals and expects that any question related to it will, henceforth, be duly examined taking into consideration its own characteristics as enshrined in its Statute. The Court would nevertheless like to emphasize that it does not wish to prejudice in any way the legitimate interests of other international judicial institutions, with which it maintains excellent relations.

74. The functioning of the United Nations depends not only on the institutional independence of its principal organs but also on their cooperation. The cooperation of the principal organs represents, in the same way as their independence, a constitutional principle of the Charter. It is in that spirit that the Court is proposing some alternatives, while respecting the decision of the General Assembly to abandon the floor/ceiling mechanism.

75. The General Assembly, recalling that the International Court of Justice is the principal judicial organ of the United Nations, has recently reaffirmed the principle whereby the conditions of service and compensation of judges of the Court — who are not officials of the Secretariat — must be separate and distinct from those of Secretariat officials (resolution 61/262). In this context, noting the fact that the Assembly wishes to introduce a more transparent system for fixing the salaries of members of the Court (see resolution 59/282), the Court would suggest two conceivable means of so doing.

76. First, it is not unprecedented for the members of the Court to be remunerated in local currency. Its members were remunerated in that way until that system was abandoned in 1950 because of the very serious devaluation of the Dutch guilder. The members of the Court's predecessor, the Permanent Court of International Justice, were also remunerated in local currency. Since the members of the International Court of Justice perform their duties in the Netherlands and incur their expenditure mostly in euros, it would seem reasonable to fix their salaries directly in euros, the official local currency at the seat of the Court. The situation of the members of the Court is comparable to that of the judges at the European Court of Human Rights in Strasbourg, the Court of Justice of the European Communities in Luxembourg and the International Criminal Court in The Hague. Remuneration in local currency would not only provide transparency but also have the advantage of being simpler and more stable. If the members of the Court were to receive their current emoluments in local currency, it would no longer be necessary to work out complex methods of adjusting the remuneration to take account of both variations in exchange rates and the local cost-of-living index. It would be sufficient, in the regular reviews of salaries for members of the Court, to take only the cost of living into account and to adjust the salaries accordingly. This more transparent, more straightforward and fairer system would ensure the stability of salaries without infringing the basic principles of the Statute of the Court.

77. In the event that such a system, despite its obvious advantages, were not to be approved, an alternative to fixing the emoluments of judges in euros would be, in the context of the post adjustment system, to increase the amount of annual net base salary in such a way as to ensure, after application of the official United Nations adjustment and exchange rate index, that the present amount of remuneration for members of the Court was maintained. To comply with the principle of equality between judges, the annual net base salary should thus be fixed at $155,000 at least, instead of $133,500. Moreover, in doing this, account would have to be taken of the fact that a judge, after a full nine-year term of office, is generally entitled to a pension equal to half his net annual salary. It is quite clearly unthinkable that the application of the new system for calculating the emoluments of judges should result in a dramatic decrease in the pension benefits to which they are entitled. Thus, given the current level of pensions of $85,040 per annum, the reference annual level of emoluments to calculate the pension of a judge after a full nine-year term could not in any case be less than $170,080.

78. The members of the Court are deeply concerned at the present situation and urge the political organs of the United Nations, in particular the General Assembly, to take account of the legal analysis contained in the present note, so as to allow another of the principal organs to operate in conformity with its Statute and with the Charter of the United Nations.